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HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No.16 OF 2006

APPELLANT DEFENDANT		M/s Bharat Petroleum Corporation Ltd.
	Versus	
RESPONDENTS PLAINTIFFS		Khatanand alias K. Anand Sara & others.

POST FOR JUDGMENT ON 7th August, 2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No.16 OF 2006

APPELLANT DEFENDANT	M/s Bharat Petroleum Corporation Ltd., through its Chairman, Bharat Bhawan 4 and 6, Kareem Bhai Road, Bellad Estate, Mumbai 400 001
Versus	
RESPONDENTS PLAINTIFFS	1. Khatanand alias K. Anand Saraf, son of Late Shri Tularam Saraf. 2. Dharam Prakash Saraf, son of Shri Khatanand Saraf. 3. Satya Prakash Saraf, son of Shri Khatanand Saraf. Present address of respondent No.2 & 3 Quarter NoE-22, 15, Block Korba, Distt. Korba (Chhattisgarh) All residents of Kilaward, Juna Bilaspur, Tehsil and Distt. Bilaspur (Chhattisgarh)

Present:

Mr. Sanjay K Agarwal, Advocate for the appellant.

Mr. Ashok Kumar Shukla, Advocate for respondent No.1. & 3

Respondent No.2 appeared in person.

JUDGMENT

(Delivered on 7/08/2007)

Dhirendra Mishra, J

1) The appellant/defendant has preferred this second appeal against the judgment and decree dated 31.12.2005 passed by learned District Judge, Bilaspur in Civil Appeal No.7-A/99 whereby the appeal preferred by the plaintiffs/respondents herein against the judgment and decree dated 1.12.1998 passed by the 4th Civil Judge, Class-I, Bilaspur in Civil Suit No.69-A/98 has been allowed and suit of the plaintiffs has been decreed with cost and it has been held that the plaintiffs are entitled to recover the vacant possession of the suit land, the possession of the appellant herein is illegal w.e.f. 7.3.1997 and damages @ Rs.1,000/- per month from 7.3.1997 till delivery of the possession has been allowed. The parties to this appeal

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shall be referred hereinafter as per their description in the trial court.

2) The instant appeal has been admitted by this Court for final hearing on 23.02.2006 on the following substantial questions of law;

1. Whether the provision contained in the Section 5 (2) of the Burma Shell (Acquisition of undertakings in India) Act, 1976 permit second renewal of the lease deed?
2. Whether in absence of termination of lease deed on breach of terms and conditions of the lease permit the lessor to recover possession of the land?"

3) Briefly stated facts necessary for adjudication of this second appeal are that the plaintiffs filed a civil suit for possession and recovery of balance of arrears of rent in the Court of 1st Civil Judge Class-II, Bilaspur with the averments that the suit land was given on lease to the defendant-M/s Burmah Shell Company, for a period of 15 years through registered lease deed dated 6.3.1967 on monthly rent of Rs.175/- by the plaintiff No.1 & one Harish Chandra Saraf. Harish Chandra Saraf has transferred his share to plaintiffs No.2 & 3 through registered sale deed dated 10.6.1996 and since then they are title holders and possessors of the suit land. Defendant-company was constituted after acquisition of Burmah Shell Company by the Central Government vide Burmah Shell (Acquisition of Undertakings in India), Act, 1976 (hereinafter shall be referred as 'the Act'). After expiry of the period of lease the defendant expressed their desire to renew the lease, therefore, negotiations took place between the parties whereupon the plaintiffs insisted for compliance of the terms and conditions of the lease deed in the event of renewal and also requested for enhancing the monthly rent. A draft lease deed was sent to the plaintiffs for their consideration, however, since the lease deed was not in accordance with the agreed draft, therefore, the lease was not renewed and the plaintiffs have sent a letter to the defendant directing them to handover the vacant possession of the land, which was refused. The demand was again reiterated subsequently on 15.6.1996 to vacate the premises by 7.3.1997, however, the same was not replied and the defendant vide their letter dated 6.8.1996 requested the plaintiffs to renew

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the lease for a further period of 15 years and along with that letter they had also sent rent for the month of March, 1997, however, the same was returned by the plaintiffs. The plaintiffs vide their legal notice dated 29.8.1996 determined the lease w.e.f. 7.3.1997 and directed the defendant to handover the vacant possession of the land, however, the same was not replied and instead thereof, the defendant had sent a notice dated 16.4.1997 intimating the plaintiffs regarding unilateral renewal of the lease deed and also stating that they have protection under the M.P. Accommodation Control Act, 1961, though the suit land is situated beyond the Bilaspur Municipal area and therefore, the provisions of Rent Control Act are not attracted. The act of defendant is in violation of the conditions of lease agreement and as such, unilateral renewal of lease is contrary to law and the same is not binding upon the plaintiffs.

4) The defendant did not appear before the learned Civil Judge despite notice and they were proceeded ex-parte. The plaintiffs examined Dharam Prakash as their witness.

5) Learned trial Court vide judgment and decree dated 1.12.1998 partly decreed the suit of the plaintiffs for arrears of rent of Rs.2,175/- against the defendant with cost. However, the prayer for recovery of possession was rejected in view of the provisions contained in Section 5 of the Act. Against the said judgment of learned Civil Judge, the plaintiffs have preferred an appeal bearing Civil Appeal No.7-A/1999 in the Court of District Judge, Bilaspur, which was allowed by the District Judge vide judgment dated 21.9.1999 and a decree was passed in favour of the plaintiffs that they are entitled to obtain vacant possession of the suit land from the defendant and they are also entitled to recover damages @ Rs.1,000/- per month from the date of filing of the suit till the delivery of possession and accordingly, decree for damages of Rs.13,000/- was passed and the suit was decreed with cost.

6) The defendant moved an application under Order 41 Rule 19 & 21 read with Section 151 of CPC before the learned 3rd Additional District Judge, Bilaspur for setting aside the ex-parte decree dated 21.9.1999 passed in Civil Appeal No.7-A/99, which was registered as Misc. Civil Case No.19/02. The said application was rejected by the learned 3rd Additional District

Judge, Bilaspur vide order dated 29.10.2002 and against the said order M.A. No.855/02 was filed by the defendant in the High Court, which was allowed vide order dated 11.5.2005 and the matter was remanded back to the First Appellate Court with a direction to rehear the Civil Appeal No.7A/99 and decide the same afresh after affording proper opportunity to both the parties.

7) Learned District Judge, Bilaspur vide impugned judgment allowed the appeal of the plaintiffs and decreed the suit with a finding that after expiry of original period of lease on 6.3.1982 the defendant had a right of renewal under the Act only once for a period of 15 years, which has already expired on 6.3.1997 and as such, the tenancy stands expired w.e.f. 6.3.1997 because the defendant had no right of renewal under the Act thereafter for a further period of 15 years and the defendant ought to have delivered the possession to the plaintiffs and since the possession has not been handed over, the defendant is liable for eviction and also for damages @ Rs.1,000/- per month from 7.3.1997 till the delivery of possession for remaining in illegal possession over the suit land.

8) Learned counsel for the appellant submits that Section 5 of the Act clearly stipulates that the property held by Burmah Shell Company in India under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant in respect of such property, as if the lease or tenancy in respect of such property had been granted to the Central Government, and all rights under such lease or tenancy shall stands transferred to, and vested in, the Central Government. Sub-section (2) of Section 5 of the Act also stipulates that on the expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately before the appointed day. As per provisions of Section 7(3), provisions of sub-section (2) of Section 5 are applicable to the Government company in the same manner as it is applicable to the Central Government. It is contended that sub-section (2) of Section 5 of the Act mandates that where the

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Government company / Central Government desires renewal of the lease/tenancy, the same would be renewed on the same terms and conditions on which it was held by Burmah Shell immediately prior to the appointed day. Reliance is placed on the judgment rendered in the matter of **Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and another** reported in **JT 2004 (4) SC 151**.

9) On the other hand, learned counsel for respondent No.1 & 3 argued that Section 5 (2) of the Act mandates that any property held by Burmah Shell under any lease or under any right of tenancy, the Central Government is deemed to have become the lessee or tenant in respect of such property in place of Burmah Shell from the appointed day and all rights under such lease or tenancy shall vest in the Central Government. Section 5(2) stipulates that if it is desired by the Central Government to renew the lease or tenancy referred to in sub-section (1), the same shall be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately before the appointed day. However, the same does not provide for perpetual tenancy or extension of lease and the same is meant for only one time arrangement and cannot be used for successive renewal of the lease '*sine die*'.

10) Respondent No.2 in his oral submission as well as in the written arguments has contended that Question No.1 is connected with Section 5 (2) of the Act, however, Section 5 (1) of the Act contemplates that where any property is held by Burmah Shell Company under any lease or under any right of tenancy, the Central Government shall, on the appointed day, be deemed to have become the lessee or tenant, in respect of such property, as if lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to, and vested in, the Central Government. Section 5(2) gives an option to the Central Government of renewal of the lease or tenancy on expiry of its term on the same terms and conditions as was held by Burmah Shell Company before the appointed day. Thus, three essentials for renewal of the lease on the same terms and conditions are (i) that the Central Government expresses its desire; (ii) terms and conditions of the lease agreement were complied with and; (iii) the extension

of lease deed on the same terms and conditions. Referring to the conditions in the agreement dated 7.3.1967 it was contended that the term of this lease expired on 6.3.1982, the appellant expressed its desire for renewal, however, the condition of lease were not complied, as advance payment of rent for three years was not paid before the expiry of the lease and no notice, as envisaged in Part-2 Rule 4 of the lease agreement, was issued, nor any renewal of lease was done. A decree for a sum of Rs.2,175/- was passed in favour of the plaintiffs towards rent of 13 months and thus from the finding of trial court as also from the 1st Appellate Court it would be evident that the appellant has not complied with the terms and conditions of the lease and in these circumstances the appellant had no right to continue in the possession and as such no right of renewal as per Section 5 (2) of the Act. Placing reliance on the judgment of Hon'ble Apex Court in the matter of **Hindustan Petroleum Corporation Ltd. and another Vs. Dolly Das** reported in **(1999) 4 Supreme Court Cases 450**, it is contended that Section 7 of the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Ltd.] Act, 1977 (for short "Caltex Act") is pari-materia to Section 5 of the Act and in Para 12 of the said judgment the Hon'ble Apex Court while examining Section 7 of the Caltex Act has categorically held that the lessee could seek for renewal only in terms of Section 7 of the Act which enabled it to renew the deed for a period of one term as originally granted. A covenant of renewal is not treated as a part of terms prescribing the period of lease but only entitles a lessee to obtain a fresh lease. Renewal of lease could only be for one term and no more.

Advancing argument on Question No.2 it has been contended that as per terms and condition of the lease deed, if the lessee fails in paying the rent for a consecutive period of two calendar months and further commits breach of condition of lease, in that case lessor has a right of entering and obtaining possession. Since the lessee has breached the condition of lease by not paying advance rent for three years in the year 1982 and did not pay the rent for the month of March, 1997 nor paid advance rent for a period of three years and failed to pay the rent continuously thereafter, as a result

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of which a decree for arrears of rent was passed by the trial court and in these circumstances as per Condition No.1 of Part-3 of the lease agreement the lessor was entitled to recover the possession.

11) It is not in dispute that the parties have entered into a lease agreement for a period of 15 years in respect of the suit land on 7.3.1967 on a monthly rent of Rs.175/-. Apart from other terms and conditions, it was also agreed upon between the parties that if the conditions of the agreement are not fulfilled by the lessee, the lessor shall have the right to re-enter the land, the agreement shall stand determined and the lessee shall vacate the possession of the land. Parties had also agreed that if the lessee shall be desirous of renewing his lease on expiration of its term and shall have given notice to the lessor in writing prior to the expiration of the term granted and shall have paid the rent & taxes and duly observed & performed all the terms, covenants, conditions and stipulations, the lessor shall grant to them a renewed lease of the demised land for a further period of 15 years commencing from the date of expiry thereof upon the same terms and conditions in all respects as are reserved and contained in the agreement.

12) During currency of the lease period all the rights and liabilities of the Burmah Shell Company was acquired under the Act which came into force w.e.f. 24.1.1976. Section 5 of the Act reads under;-

> "**5. Central Government to be lessee or tenant under certain circumstances.**- (1) Where any property is held in India by Burmah Shell under any lease or under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to, and vested in, the Central Government.

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(2) On the expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately before the appointed day."

13) As per Section 7 (3) of the Act the provisions of sub-section (2) of section 5 shall apply to a lease or tenancy, which vests in a Government Company, as they apply to a lease or tenancy vested in the Central Government and reference therein to the "Central Government" shall be construed as a reference to the Government company.

14) The only question for consideration in this appeal is that whether the option given to the Central Government or a Government company under Section 5 (2) of the Act contemplates second renewal of the lease?

15) It is an admitted fact that in Para 7 of the plaint it has been admitted by the plaintiff that the defendant exercised the option of renewal of lease under Section 5(2) of the Act in the year 1996 on the same terms & conditions before the expiry of the period of lease and subsequently sent the rent payable for the month of March, which was returned by the plaintiff. In the matter of P. Kesavan (supra) in Para 18 & 19 the Hon'ble Apex Court has held that where the Government company expresses its desire to renew the lease, the same would stand renewed on the same terms and conditions. Sections 5 (2) & 7 (3) of the Act are required to be given its purposive meaning, having regard to the object sought to be achieved, as the Central Government acquired running business undertakings dealing in distribution and marketing of petroleum products and therefore, the lease or tenancy for outlets were to be continued with the Central Government or the Government company, so that no hindrance is placed in the matter of distribution of the products. However, the question still remains as to whether the intention of the statute was to enable the Central Government or the Government company to exercise the option available to it under Section 5 (2) of the Act only once or the same could be exercised in perpetuity. Since in the above cited case option was exercised for the

first time, therefore, this aspect has not been dealt with in the above judgment.

16) Sub-section 2 of Section 5 of the Act provides for an option to be exercised by the Central Government or Government Company for renewal of lease or tenancy referred to in sub-section (1) on the same terms and conditions on which it was held by the Burmah Shell immediately before the appointed day. Once this option is exercised and in pursuance thereof lease or tenancy stands renewed in favour of the Central Government or Government Company for a further extended period, in these circumstances after renewal of the lease the Central Government or Government company becomes the lessee and lease or tenancy between Burmah Shell and the lessor referred to in sub-section (1) ceases to exist. Therefore, statutory option for second renewal of the lease on the same terms and condition by the Central Government or Government Company is not exercisable under Section 5 (2) of the Act.

17) I am fortified in my view from the judgment of Hon'ble Supreme Court In the matter of Doli Das (supra) where while dealing with the provisions of Section 7 of the Caltex Act in respect of right to renew the lease it has been held in Para 12 as under:-

> "12. The lease had been granted with effect from 1-10-1969 in favour of M/s Caltex (India) Ltd. and on the coming into force of the Act on 23-4-1977 the appellant had stepped into its shoes and from that day onwards the appellant has been in possession of the same till now. The crucial question whether the option for renewal either in terms of the lease deed or in terms of the Act had been availed of or not is the controversy between the parties now. Litigation between the parties has been going on from 1993 onwards. On the expiry of the term the deed provides for renewal for two terms of 10 years each on the same terms and conditions except for enhancement of rent and execution of fresh deed modifying the clause relating to renewal. The appellant gave notice of renewal in terms of the provisions of (*i*) the deed in the letter dated 23-5-1979, and (*ii*) the Act in the letter dated 13-9-1989. Now it is not necessary to examine the effect of renewal for the earlier period as even on the appellant's own showing it is invoking the statute in the latter notice and not the terms of the deed. If that is so, the appellant could seek for renewal only in terms of Section 7 of the Act which enabled it to renew the deed for a period of one term

as originally granted. A covenant for renewal is not treated as a part of the terms prescribing the period of lease but only entitles a lessee to obtain a fresh lease. Renewal of lease could only be for one term and no more, but nevertheless it could be contended that the covenant for renewal was also part of the lease and, therefore, stood incorporated in the renewed lease arising under the Act. However, in the peculiar facts of this case, we think that it is not necessary to enter upon the merits of the controversy regarding the effect of clause 3(*g*) of the lease deed or the rights available under the Act for renewal of the lease period. We are of the opinion that the ends of justice in this case will be met if we modify the order of the High Court in the following terms:

(*1*) The appellant does not have power to claim exercise of option for any renewal of the lease beyond 30-9-1999;

(*2*) The appellant seeks for and is granted time to hand over vacant possession of the premises in question to the respondent on or before 31-3-2000, however, subject to filing of the usual undertaking in this Court within a period of four weeks from today;

(*3*) Rent payable is as per the terms of the lease deed, that is, Rs.1920 per month which shall be paid till the date of handling over the vacant possession;

(*4*) If any arrears of rent, as stated above, have not been paid, the same shall be paid within a period of three months from today; and

(*5*) The order made by the High Court to the extent it is inconsistent with our order shall stand set aside.

18) Section 7 of the Caltex Act is pari-materia to Section 5 of the Act, which reads under:-

"**7. Special provisions as to certain rights and interests held by Caltex (India) before the appointed day** .—(1) Every right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or any right under any arrangement to secure any premises for any purpose), which Caltex (India) held immediately before the appointed day, shall, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, vest in, and be held by, the Central Government on and after the appointed day on the same terms and conditions on which Caltex (India) would have held it, if no negotiations had taken place for the acquisition by the Central Government of the undertakings of Caltex (India) in India or, as the case may be, if this Act had not been passed.

(2) If at any time after the 2nd day of February, 1974 (being the date on which the Central Government's policy for acquiring undertakings engaged in the production, marketing or distribution of petroleum products was made known) and before the commencement of this Act, Caltex (India) surrendered or otherwise relinquished any right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or a right under any arrangement to secure any premises for

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any purpose), then, for the purposes of this Act, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, the Central Government shall, on and after the appointed day, be entitled to such right or interest on the same terms and conditions on which Caltex (India) would have been entitled to such right or interest if it had not surrendered or otherwise relinquished such right or interest and this Act had not been passed. Provided that nothing in this sub-section shall apply to any right or interest surrendered or otherwise relinquished by Caltex (India) before the commencement of this Act for sufficient monetary consideration.

(3) On the expiry of the term of any lease, tenancy or arrangement referred to in sub-section (1) or sub-section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into."

19) Thus, from the above judgments it can safely be inferred that sub-section (2) of Section 5 of the Act also contemplates that the statutory option may be exercised by the Central Government or Government Company only once. In the instant case, the appellant is invoking the statute and not terms of the lease deed and therefore, the appellant could seek for renewal only in terms of Section 5 (2) of the Act, which enabled it to renew the lease for a period of only one term as originally granted, which stood expired in the year 1997.

20) On the basis of aforesaid analysis, the instant second appeal preferred by the appellant is dismissed with cost and the impugned judgment of the First Appellate Court is hereby affirmed. The appellant shall handover the vacant possession of the suit land to the respondents within a period of six months from today. Decree be drawn accordingly.

Sd/-
Dhirendra Mishra
Judge

Roshan/-